

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**



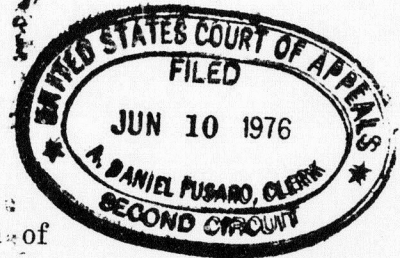


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76-7168

5/20

United States Court of Appeals  
FOR THE SECOND CIRCUIT



B P/S

FRANK SANTOS, CARL GUERRIERRI, MARIO VOZZO, each of them individually and on behalf of all other persons, members of local unions affiliated with Painter's District Council #9 of New York City and the International Brotherhood of Painters and Allied Trades, employed or seeking employment as woodwork finishers within New York City, similarly situated,

*Appellants,*

*vs.*

DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

*Appellee.*

JOINT APPENDIX

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*Attorney for Appellants*

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Docket Entries

CIVIL DOCKET  
UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev.

JUDGE MITCHELL

75 CIV. 49 55

208-1 75-4355	TITLE OF CASE	3 720 1 1	0835 75-4355 ATTORNEYS
FRANK M. ...		For plaintiff:	
CARL G. ...		Burton H. Hall	
MARIO VOZZO, each of them individually and on behalf of all other persons, members of local unions affiliated with Painter's District Council #9 of New York City and the International Brotherhood of Painters and Allied Trades, employed or seeking employment as woodwork finishers within New York City, similarly situated		401 Bdwy, NYC 10013 431-9114	
VS			
DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO			
		For defendant:	
		Frederick, Abbott & Morgan	
		1 Chase Bank Plaza, NYC 10005	
		944-4800	

STATISTICAL RECORD		COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISH.
J.S. 5 mailed	X	Clerk	SEP 4 1975	5719K		
J.S. 6 mailed		Marshal				
Basis of Action: Injunctive relief; labor act; relations act; 29 USC 185		Docket fee				
		Witness fees				
Action arose at:		Depositions				



'5 Civ. 4355 SANTOS VS DISTRICT COUNCIL ET AL

METZNER, J.

75 CIV. 4355

DATE	PROCEEDINGS	Date Of Judgment
3-04-75	-1- Filed complaint and issued summons.	
3-04-75	-2- Filed affdt. by Burton Hall (for pltf.) requesting that Alexander Beato serve the summons and complaint upon defts. So ordered, Clerk	
9-05-75	3) Filed summons and return of process server -- served; Jack Gilman at offices of deft. labor organization on 9-4-75	
0-01-75	4) Filed stip. and order ext. deft. District Counsel's time to answer to 10-10-75 -- Metzner, J.	
0-20-75	5) Filed stip. and order ext. deft. District Counsel of NYC's time to answer to 10-24-75 -- Metzner, J.	
1-03-75	6) Filed stip. and order ext. deft. District Counsel of NYC's time to answer to 10-31-75 -- Metzner, J.	
1-05-75	7) Filed deft. District Counsel's statement under Rule 9(g), affdvt. and notice of motion for summary judgment - ret. 11-14-75	
1-05-75	8) Filed deft. District Counsel's affdvt. of Conrad F. Olsen in support of above motion for summary judgment.	
1-05-75	9) Filed deft. District Counsel's memorandum in support of motion for summary judgment.	
11-14-75	10) Filed stip. and order adj. defts motion to dismiss to 12-5-75 -- Metzner, J.	
12-03-75	11) Filed stip. and order adj. defts motion to 1-9-76. -- Metzner, J.	
2-29-75	12) Filed pltf's statement under Rule 9(g) and notice of motion under Rule 56 for partial summary judgment - ret. 1-9-76.	
2-29-75	13) Filed pltf's affdvt. of Mario Vozzo in support of motion for partial summary judgment, and in opposition to defts. motion.	
2-29-75	14) Filed pltf's memorandum in opposition to defts motion to dismiss and in support of plaintiffs motion for summary judgment (partial)	
12-29-75	15) Filed pltf's affdvt. and notice of motion for class action determination - ret. 1-9-76.	
01-21-76	16) Filed stip. and order that deft. District Counsel has to reply to pltf's memorandum in opposition to deft's motion to dismiss and for summary judgment; deft. District Counsel has to reply to pltf's motion for class action and pltf's motion for partial summary judgment, etc. by 1-30-76 -- Metzner, J.	
01-28-76	17) Filed defts affdvt. of Irving Zeidman in support of Carpenters motion to dismiss and in opposition pltf's motion for partial summary judgment.	
01-28-76	18) Filed defts memorandum re motions to dismiss, partial summary judgment and class action certification.	
02-03-76	19) Filed plaintiffs' reply memorandum	
02-03-76	20) Filed plaintiffs' reply affdvt. of Carl Blum	
03-12-76	21) Filed Opinion # 44050... Summary judgment is granted for deft. there being no substantial question of fact. So ordered. -- Metzner, J. m/n	
03-12-76	== Filed memo endorsed on document #15: Motion denied - see opinion #44050 -- So ordered - Metzner, J. m/n	
03-12-76	== Filed memo endorsed on document #12: Motion denied - see opinion #44050 -- So ordered - Metzner, J. m/n	
03-19-76	22) Filed judgment and order in favor of defendants dismissing the complaint. -- Clerk.	
03-29-76	23) Filed plaintiffs notice of appeal to the US Court of Appeals for the 2nd Circuit from order granting summary judgment for the defts'. copy mailed to Breed, Abbott & Morgan, Esqs.	



Complaint

(Caption Omitted)

Plaintiffs, by their attorney, for their Complaint, allege that:

1. Plaintiffs bring this cause of action as real parties in interest, and against defendant as a real party in interest, on a contract between labor organizations, to wit: the Constitution of the American Federation of Labor and Congress of Industrial Organizations (hereinafter referred to as the AFL-CIO Constitution), and for violations of that contract as set forth and alleged hereinafter. Jurisdiction is conferred upon this Court by Section 301(a) of the Labor-Management Relations Act of 1947 (hereinafter the LMRA), 29 U.S.C. 185(a).

2. CLASS ACTION ALLEGATIONS. (a) <sup>n</sup>T<sub>h</sub>is action is properly maintainable as a class action pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure. (b) There are approximately 120 members of the class represented by the named plaintiffs. (c) The class represented consists of all members of local unions comprising Painters' District Council No. 9 of New York City (hereinafter Painters' District Council) who are either employed as or seeking employment as woodwork finishers at shops or plants within the five boroughs of the City of New York. (d) The claims of the

named individuals are typical of the claims of the class as a whole and there are no conflicts of interest among the class.

(e) The questions of law and fact common to the class are the entitlement of members of the class, as real parties in interest, to enforcement of Article XX of the AFL-CIO Constitution and of a particular arbitral determination made and rendered pursuant to such Article in Case No. 69-31 by Impartial Umpire David L. Cole, on September 4, 1969.

3. Defendant DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO (hereinafter Carpenters' District Council) is and at all times herein mentioned has been a labor organization representing employees in an industry affecting commerce within the meaning of the LMRA, and maintains its principal office at 204 East 23rd Street in the City, County and State of New York, within the geographical jurisdiction of this Court.

4. Each of the plaintiffs is, and at all times herein mentioned has been, a member of one of the 27 local unions that comprise the Painters' District Council, and that are affiliated with the International Brotherhood of Painters and Allied Trades (hereinafter Painters' Brotherhood). Each of the Plaintiffs is by trade and occupation, and at all times herein mentioned has been by trade and occupation, a woodwork finisher and is, and at all times herein mentioned has been, either employed or seeking employment as a woodwork finisher.



5. Painters' Brotherhood is and at all times herein mentioned has been an international labor organization representing employees in an industry affecting commerce within the meaning of the LMRA.

6. At all times herein mentioned Painters' Brotherhood has been, and still is, composed of various local unions and other subordinate bodies, including Painters' District Council and the local unions aforescribed which compose it.

7. Carpenters' District Council is and at all times herein mentioned has been a subordinate body of and affiliated with an international labor organization, to wit: United Brotherhood of Carpenters and Joiners of America (hereinafter Carpenters' Brotherhood), and at all times herein mentioned Carpenters' Brotherhood has been, and still is, an international labor organization representing employees in an industry affecting commerce within the meaning of the LMRA.

8. Painters' Brotherhood and Carpenters' Brotherhood are, and at all times herein mentioned have been, affiliates of the American Federation of Labor and Congress of Industrial Organizations (hereinafter AFL-CIO).

9. Painters' Brotherhood and Carpenters' Brotherhood maintain their principal offices in the City of Washington, District of Columbia.

10. In or about 1955, AFL-CIO adopted, at a convention at

which Painters' Brotherhood and Carpenters' Brotherhood were each duly represented by delegates with full voting rights and powers, a Constitution, referred to herein as the AFL-CIO Constitution, and at various times since 1955 the said AFL-CIO has duly adopted, by convention action, and in conventions at which Painters' Brotherhood and Carpenters' Brotherhood were each duly represented by delegates, adopted amendments thereto, and at all times from the adoption of the AFL-CIO Constitution in 1955 until the present Painters' Brotherhood have agreed, on behalf of themselves and of all subordinate bodies, including Carpenters' District Council and Painters' District Council, to be bound and to continue to be bound by the terms and provisions of the AFL-CIO Constitution.

11. Neither Painters' Brotherhood nor Carpenters' Brotherhood has ever, at any time, repudiated or abrogated or rescinded the AFL-CIO Constitution or its duties and obligations under the AFL-CIO Constitution.

12. By reason of the adherence of Painters' Brotherhood and of Carpenters' Brotherhood to the AFL-CIO Constitution, all subordinate bodies of each are and remain bound by the provisions thereof.

13. By the terms and provisions of the AFL-CIO Constitution, on January 1, 1962, Article XX of the AFL-CIO Constitution came into effect between and among all national and international and other labor organizations affiliated with the AFL-CIO, and the said



Article has remained in effect, and remains in effect, between and among all such labor organizations so affiliated, and in particular between and among Painters' Brotherhood and Carpenters' Brotherhood.

14. The said Article XX of the AFL-CIO Constitution provides and at all times hereinmentioned has provided, that it is the duty of each labor organization affiliated with the AFL-CIO to respect the established collective bargaining relationships and established work relationships of every other labor organization affiliated with the AFL-CIO, and provides for the settlement of disputes arising under such Article by an arbitral procedure set out and specified in such Article.

15. For many years prior to September 4, 1969, and in particular prior to July 1967, Painters' Brotherhood and its subordinate body, Painters' District Council, had established collective bargaining relationships and established work relationships with twenty-one woodwork finishing plants or shops in New York City, and represented the woodwork finishing employees of such plants or shops in collective bargaining; and until July 1967 Painters' District Council regularly entered into collective bargaining agreements with the employers' association which represented the said twenty-one woodwork finishing plants or shops in collective bargaining.

16. In July 1967, the collective bargaining agreement theretofore in force between Painters' District Council and the employ-

ers' association which represented the aforesaid twenty-one woodwork finishing plants or shops in collective bargaining expired and a strike ensued.

17. During the strike described in paragraph 16 above, Carpenters' District Council sent its members through the picket lines maintained by Painters' District Council outside the twenty-one woodwork finishing plants or shops aforescribed to perform work that had, until the commencement of the strike, been performed by members of Painters' District Council.

18. Following July 1967, the aforesaid strike terminated upon an understanding that a collective bargaining agreement would be entered into, and negotiations toward that end continued; in March 1969, however, the strike began again. Upon the first termination of the strike, some of the members of Carpenters' District Council sent through picket lines of the Painters' District Council as aforescribed were withdrawn and replaced by members of Painters' District Council; however, after the resumption of the strike in March 1969, the Carpenters' District Council, acting in concert with the employers, once again sent its members through the picket lines of the Painters' District Council to perform work that had until such resumption, or until the commencement of the strike, been performed by members of Painters' District Council.

19. In acting as aforesaid, the Carpenters' District



Council violated and failed to respect the established collective bargaining and established work relationships of Painters' District Council.

20. By reason of the actions described in paragraph 18 hereinabove, Painters' Brotherhood, on or about April 10, 1969, filed a complaint within Article XX of the AFL-CIO Constitution against the Carpenters' Brotherhood.

21. Pursuant to the provisions of Article XX of the AFL-CIO Constitution, the complaint of the Painters' Brotherhood, described in paragraph 20 above, was brought to a hearing, at which Carpenters' Brotherhood and Painters' Brotherhood were equally given the opportunity to present witnesses and other evidence.

22. The said hearing was conducted by an Impartial Umpire duly appointed and/or selected pursuant to Article XX of the AFL-CIO Constitution and was concluded in August 1969.

23. On September 4, 1969, the Impartial Umpire above described handed down a determination in regard to the complaint filed by Painters' Brotherhood as aforesaid, a copy of which determination is annexed hereto as Exhibit "A."

24. The said determination of the Impartial Umpire finds that at 17 of the aforesaid twenty-one shops, Painters' District Council had an established work relationship as the bargaining representative for woodwork finishers, and that at the four



other shops of the said twenty-one, it had represented some but not others of the woodwork finishers. Accordingly, pursuant to Article XX of the AFL-CIO Constitution, he determined that it was the duty of the Carpenters' Brotherhood, under such constitution, to respect the work relationship of the Painters' Brotherhood, and of the latter's District Council, at the 17 shops or plants, which shops or plants are listed on the last page of his determination.

25. Under the AFL-CIO Constitution, and in particular under Article XX thereof, it is the duty and obligation of Carpenters' Brotherhood, and of each of its subordinate bodies, including Carpenters' District Council, to obey and abide by the determination of the Impartial Umpire unless and until the same be set aside, or rescinded.

26. The aforesaid determination of the Impartial Umpire has never been set aside or rescinded.

27. Painters' Brotherhood and Painters' District Council has repeatedly, since September 4, 1969, requested Carpenters' District Council to obey and abide by the determination of the Impartial Umpire described above.

28. Carpenters' District Council has consistently refused and still refuses to obey the determination of the Impartial Umpire, and has continuously asserted, and continues to assert, in violation of such determination, jurisdiction over woodwork finishing work



at the seventeen plants or shops and bargaining rights on behalf of persons performing such work.

29. Plaintiffs and other members of the class represented have made repeated protests concerning the refusal of the Carpenters' District Council to obey the Impartial Umpire's determination and its continued assertion of jurisdiction and bargaining rights in regard to woodwork finishing work; and plaintiffs have asked Painters' District Council and Painters' Brotherhood to initiate action to compel Carpenters' District Council to obey the Impartial Umpire's determination. On June 28, 1972, a committee of woodwork finishers, including the three plaintiffs, served upon the Secretary-Treasurer of Painters' District Council a memorandum asking him to take effective action to enforce the Impartial Umpire's determination; and from his failure to respond appealed in writing, by letter of July 5, 1972, to the General Secretary-Treasurer of Painters' Brotherhood. Plaintiffs again appealed to the General Secretary-Treasurer of Painters' Brotherhood by letter of September 22, 1972, which letter was signed by all three plaintiffs and by thirty-seven other members of the class represented. Plaintiff VOZZO wrote to the General President of Painters' Brotherhood on May 8, 1973 again protesting the failure of Painters' District Council to take effective action to compel compliance by Carpenters' District Council with the Impartial Umpire's award. Plaintiff SANTOS wrote to the General President of Painters' Brotherhood



on February 19, 1974, on March 25, 1974, on June 18, 1974, and on February 4, 1975, protesting the lack of action taken to compel Carpenters' District Council to obey the Impartial Umpire's decision. On April 18, 1974, the General President of Painters' Brotherhood wrote to plaintiff SANTOS advising him that a copy of his letter of March 25, 1974 had been referred to the Secretary Treasurer of Painters' District Council for his comments; on February 14, 1975, the General President of Painters' Brotherhood wrote to plaintiff SANTOS advising him that a copy of his letter of February 4, 1975 had been referred to the Secretary-Treasurer of Painters' District Council for his comments.

30. In 1972, plaintiff NOZZO sent a letter, signed also by three other members of the class represented, to President George Meany of the AFL-CIO, with copies to the General President and General Secretary-Treasurer of the Painters' Brotherhood, asking that the Impartial Umpire's determination be enforced.

31. On November 14, 1973, the General President of the Painters' Brotherhood sent a letter to President George Meany of the AFL-CIO asking that the issue raised by the non-compliance of Carpenters' District Council with the Impartial Umpire's award and determination be remanded to a subcommittee of the Executive Council of the AFL-CIO for adjustment.

32. By the requests, protests and appeals above described, plaintiffs, the class represented, and the Painters' Brotherhood



have exhausted all remedies reasonably available to them within the AFL-CIO to secure compliance by defendant Carpenters' District Council with the Impartial Umpire's determination and with Article XX of the AFL-CIO Constitution.

33. By the appeals and requests described in paragraph 29 above, plaintiffs have exhausted all remedies reasonably available to them within the Painters' Brotherhood for the failure of the same or of its subordinate body, Painters' District Council, to institute suit or other effective action to enforce the Impartial Umpire's determination.

34. By reason of the failure and refusal of defendant <sup>A</sup>Carpenters' District Council to obey and abide by and comply with the determination of the Impartial Umpire as required by Article XX of the AFL-CIO Constitution, plaintiffs and other members of the class represented have lost or been denied employment as <sup>many</sup> woodwork finishers, and/have been required to take up membership in Carpenters' District Council or one of its affiliated local unions as a condition of employment or continued employment; and by reason of the failure and refusal of defendant Carpenters' District Council to obey and comply with such award, the 17 woodwork plants and shops have ceased to bargain with Painters' District Council and have ceased to pay contributions to the welfare and pension funds maintained by Painters' District Council, and



as a result thereof plaintiffs and other members of the class represented have lost valuable welfare and pension benefits that would otherwise be due them from such funds, and have lost entitlement to such benefits.

35. Unless otherwise ordered and directed by this Court, plaintiffs, and all members of the class represented, will continue to suffer loss of employment and loss of entitlement to valuable welfare and pension benefits, and will continue to be required to join Carpenters' District Council and/or its various local unions as a condition of employment as a woodfinisher in any of the 17 plants or shops aforescribed, and Carpenters' District Council will continue to assert jurisdiction over woodwork finishing work and bargaining rights in regard to woodwork finishing employees at the 17 plants or shops aforescribed, in violation of the Impartial Umpire's determination and in violation therefore of Article XX of the AFL-CIO Constitution, and plaintiffs and other members of the class will suffer grievous material and irreparable injury and damage in consequence, for which there is no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment:

1. declaring that the assertion of jurisdiction over woodwork finishing work and bargaining rights on behalf of persons performing such work at the seventeen plants or shops aforescribed



by Carpenters' District Council is a breach and violation of its contractual obligations under the AFL-CIO Constitution;

2. Ordering and directing defendant Carpenters' District Council, its officers, employees, agents and attorneys, and all persons in active concert or participation with any of them, to obey and perform their obligations under the AFL-CIO Constitution and the determination of the Impartial Umpire in regard to wood-work finishing work at the seventeen plants or shops aforescribed;

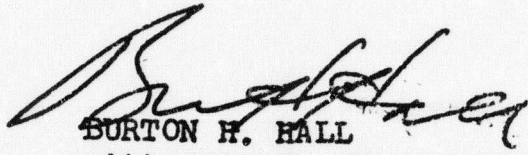
3. Enjoining and restraining defendant Carpenters' District Council, its officers, employees, agents and attorneys, and all persons in active concert or participation with any of them, from asserting jurisdiction over woodwork finishing work or bargaining rights on behalf of persons performing such work at any of the seventeen shops or plants listed in the Impartial Umpire's determination (Exhibit A hereto) and described above;

4. For damages, in such sum as the Court may determine, for the losses of wages suffered by each plaintiff and member of the class represented, and for the losses of welfare and pension and other fringe benefits suffered, by reason of the wrongful acts complained of;

5. For punitive damages in such sum as the Court may deem appropriate;

6. for the costs of this action and necessary disbursements, including a reasonable attorney's fee; and

7. For such other and further relief as may be appropriate.

  
BURTON H. HALL  
Attorney for Plaintiffs  
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New York, N.Y., 10013  
(212) 431-9114

(Next page: Appendix to Complaint, decision  
of AFL=CIO Impartial Umpire dated September 4, 1969)



Case No. 69-31

Dated: September 4, 1969

Hearing concluded: August 18, 1969

Before the Impartial Umpire under the AFL-CIO Internal Disputes Plan

Between

Brotherhood of Painters, Decorators  
and Paperhangers of America

-and-

United Brotherhood of Carpenters  
and Joiners of America

Determination re:

21 shops in greater New York City  
affiliated with Manufacturing  
Woodworkers' Association, Inc.

Appearances:

For Brotherhood of Painters, Decorators and Paperhangers of  
America ("Painters")

James Shay, Director of Jurisdiction

William B. Peer, Associate General Counsel

Henry J. Easton, Counsel, District Council No. 9

Frank Schonfeld, Secretary-Treasurer, District Council No. 9

Carl Blum, Administrative Aide, District Council No. 9

For United Brotherhood of Carpenters and Joiners of America ("Carpenters")

Charles Johnson, Jr., President, New York District Council

Francis X. Ward, General Counsel

Daniel F. O'Connell, Counsel

Edward A. Bjork, Secretary-Treasurer, New York District Council

William F. Mahoney, Vice President, New York District Council

The charges made by the Painters are that the Carpenters' District Council of New York and the locals affiliated with it have been violating Sections 2 and 3 of the AFL-CIO Internal Disputes Plan since July 1, 1967 by taking over or attempting to take over the representation rights of the Painters' District Council No. 9 of New York City at 21 shops or by attempting by agreement or collusion with the employers to have employees represented by the Carpenters do the work customarily performed by employees represented by the Painters. These shops are all affiliated with the Manufacturing Woodworkers Association of Greater New York, Inc. It is claimed that the Painters have represented the woodfinishers in the shops in question for varying periods of years, such representation running back in some instances for more than 30 years.

This has been a strongly contested dispute, with feelings running unusually high. Much of the confusion has stemmed from the failure to agree upon a definition of the work in question.



Involved is the final woodfinishing work done in cabinet, furniture, or fixture manufacturing shops. While the Carpenters in their presentation and exhibits referred to woodfinishing in broad and general terms, the issue relates only to such work as it is performed on assembled or manufactured furniture, fixtures or cabinets in the finishing or spray rooms or at the locations where finished pieces are delivered or installed. It is not disputed that members of the Carpenters perform certain finishing or improving operations on the wood they use in their cabinet work, but we are concerned only with the finishing operations performed in the areas identified as the finishing rooms, or in the spray booths.

For a good many years there have been agreements between the Association and the Painters' District Council. Typically these agreements have stipulated, as in Section 1 of the July 1, 1964 -- June 30, 1967 agreement, that the employer recognizes this Union as the representative of the hardwood finishers "and agrees to deal collectively only with this Union for and on behalf of its hardwood finishers." These agreements have also included a union shop provision.

The "employer" meant certain shops or enterprises with whom the Painters dealt and not all companies associated with the Association. The Association has 48 members, but the Painters claim representation rights and established work relationships in only 21 of these.

All 48 have had agreements with the Carpenters covering production work, but until the agreement of July 1, 1967 was made, the classifications of "employees covered" did not mention woodfinishers. In this latest agreement, however, "woodfinishers" was added in Article B, paragraph 1, and in another part of the agreement, Article U, a new classification was introduced, called "Wood Finisher's Helper."

In 27 of these 48 shops, it is undisputed that the Carpenters have represented the woodfinishers in the finishing and spray areas as well as all other production employees. Our dispute is confined to such woodfinishers in the other 21 shops.

While it is not necessary to go into the details and reasons therefor, it is a fact that a serious feud developed before July 1967 between officials of these two Councils in New York City. The Painters, being unable to reach agreement with the Association as of July 1, 1967, declared a strike in the 21 shops. The Carpenters, however, continued to work, and the Painters charge that employees represented by the Carpenters were encouraged to and did in most instances take over the woodfinishing duties of the striking Painter members, that surreptitiously the Carpenters modified the coverage of their new agreement, effective July 1, 1967, to encompass the classifications and work of the woodfinishers, and thereafter threatened to suspend all work in any shop which entered into agreement with the Painters giving that organization exclusive representation rights of the kind it had previously had as to woodfinishers.

When the Painters' strike was ended, although negotiations were conducted and progress appeared to be made, no agreement could be consummated or signed. The Painters have had no agreement since July 1, 1967. It complains that many



of its members have been replaced in these shops by employees represented by Carpenters, and that much of the work is now being performed by the new classification of woodfinisher helpers at rates of pay substantially below those that were payable under the Painters' agreement.

The Carpenters insist that the changes made in its 1967 contract were in retaliation for efforts being made by the Painters to take over all wood finishing work in shops of members of the Association.

Obviously, if the Painters were attempting to interfere with either the established collective bargaining relationship or the established work relationship of the Carpenters with respect to wood finishing or wood finishers in 28 of the Association shops, a Carpenters' complaint of violation of Article XX by the Painters would unquestionably be sustained. Such attempts are to be dealt with in this manner, under the provisions of the Internal Disputes Plan, and not by engaging in a counter attack which is itself in violation of Article XX.

An exceptional feature of this dispute is the ardor with which the employers and their Association have supported the Carpenters and participated or attempted to participate in its presentation. After they were given an opportunity to make oral statements, some of them undertook to join in the arguments. They waited outside our hearing room at our hearings, and numerous written statements were prepared by them and presented by the Carpenters as evidence. They have also instituted a court action to compel the Carpenters to provide them with woodfinishers to replace Painter woodfinishers who are again on strike, the current strike having started March 21, 1969 because there is still no new Painter agreement. Their position is that the Carpenters have really represented all their employees over the years, despite the numerous agreements they have had with the Painters conferring upon them in certain shops the exclusive right to represent hardwood finishers. The employers contend that the Painters had such representation rights only by sufferance of the Carpenters, and that the expanded 1967 Carpenter agreement has overridden or eliminated the rights of the Painters.

Whatever might be the effect in the absence of the AFL-CIO Internal Disputes Plan of the enlargement of the Carpenters' agreement, it is clear that it will not suffice to override or weaken the established rights which the Painters has as an affiliate of the AFL-CIO as set forth in Article XX of the Federation's Constitution.

In the presentation of the Carpenters, including the statements of the employers, practices instituted during the Painters' 1967 strike or since then are described as evidence of the customary manner of having wood finishing work performed in these shops. It is, however, the introduction of many of such practices since July 1, 1967 which is the very basis of this Internal Disputes Plan complaint.

One may wonder, then, why this complaint was delayed until April 10, 1969. The reason is that there have been many efforts to adjust the differences between these two affiliates. Testimony was offered indicating that they were on the verge of settlement. It was proposed and tentatively agreed that each affiliate would have the bargaining and work relationships it had as of the pre-



July 1967 period, and that the other would acknowledge and respect them. The testimony was that the Carpenters finally declined to proceed along these lines.

This is primarily a dispute arising under Section 3 of Article XX, because the established work relationship of the Painters is being undermined and is still under attack. The Carpenters are charged with violations, in that they refuse to respect the established work relationships of the Painters and have been attempting by agreement or collusion with the employers or by the exercise of economic pressure to obtain work for its members as to which the Painters has established work relationships.

Evidence in considerable detail has been presented and analyzed. It is clear that employees represented by the Painters have customarily been performing wood finishing work of the kind described above at all 21 of the shops in question. They have also been doing retouching or refinishing on furniture, fixtures and cabinets at the locations to which such items have been delivered.

It has been held in a number of previous determinations, however, that the provisions of Section 3 may not be invoked against another affiliate if members of both have interchangeably or concurrently performed work of the kind in question at a particular plant or work site. For a list of such cases see the 1962-1967 Index of Determinations of the Impartial Umpire under the AFL-CIO Internal Disputes Plan, at pages 107-112.

Moreover, it is now well established that Section 3 may not be applied to work done at new constructions or in the field, because an established work relationship by definition applies only if the work has customarily been performed at a particular plant or work site. See, e.g. International Association of Machinists - International Union of Operating Engineers (Heavy and Highway Construction Industry, Chicago) Case No. 67-61.

For the reason set forth in the preceding paragraph the refinishing and retouching work at the places of delivery may not be included in the established work relationship of the Painters. Because there has been a mixed practice at certain plants, meaning that it has been customary to have the stipulated wood finishing work done both by employees represented by the Painters and by others in the Carpenters' bargaining units, several plants must also be excluded. This applies to four shops: Carmel Construction Corp., Korngold Bros., Metropolitan Showcase Corp., and Anton Waldman Associates. The complaint of violations will be sustained as to the remaining 17 plants.

#### DETERMINATION

The complaint of the Brotherhood of Painters, Decorators and Paperhangers of America that because of the actions of its District Council of New York City the United Brotherhood of Carpenters and Joiners of America has been violating and is in violation of the provisions of Section 3 of Article XX of the AFL-CIO Constitution, is sustained with respect to the woodfinishing work, as defined above, conducted in the woodfinishing and spray rooms or areas



of the following 17 shops in Greater New York City:

Alliance Woodworking Co., Inc.  
Columbia Woodworking Co., Inc.  
Jacob Froehlich Cabinet Works  
Greenwich Picture Co., Inc.  
Jaff Bros. Woodworks, Inc.  
John Langenbacher Co., Inc.  
Richter & Ratner Contracting Corp.  
Rini Woodcraft Corp.  
Saget-Zeien Woodworking Co.

The Bartos Company  
Creative Woodworking Co., Inc.  
M. Gerber Construction Co., Inc.  
Minzmann Co.  
Juno Woodworking Co., Inc.  
Mestel Furniture Co.  
Ott Bros. and Mark, Inc.  
Royal Woodworking Corp.

Dated: September 4, 1969

/s/ David L. Cole

David L. Cole, Impartial Umpire

Defendant's Notice of Motion

(Caption Omitted)

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of CONRAD F. OLSEN, sworn to on October 28, 1975, the exhibits annexed thereto and all prior pleadings had herein, the undersigned will move before the Hon. Charles M. Metzner in Room 2201 of the United States Courthouse, Foley Square, New York, New York on November 14, 1975 at 9:30 A.M. or as soon thereafter as counsel may be heard, for an Order, pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Procedure, dismissing the Complaint herein for failure to state a claim upon which relief may be granted and granting summary judgment to the District Council on the grounds that the District Council is entitled to judgment as a matter of law and summary judgment on facts concerning which there is no genuine issue, and granting such other and further relief as to the Court may seem proper.

Dated: New York, New York  
October 31, 1975

Yours, etc.,

BREED, ABBOTT & MORGAN  
Attorneys for Defendant  
District Council  
Office & P. O. Address  
1 Chase Manhattan Plaza  
New York, New York 10005  
(212) 944-4800

TO:

BURTON H. HALL, ESQ.  
401 Broadway  
New York, New York 10013



Defendant's Rule 9(g) Statement

STATEMENT PURSUANT TO RULE 9(C) OF THE  
GENERAL RULES OF THIS COURT

Pursuant to Local Rule 9(g), defendant District Council of New York City and Vicinity of United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the "Carpenters"), makes the following statement of material facts about which there is no genuine issue in support of its Motion to Dismiss and for Summary Judgment:

1. Since July 1, 1967, the Carpenters have had a series of collective bargaining agreements with the Manufacturing Woodworkers Association of Greater New York, Inc. (the "Association") which have provided among other things that the Carpenters are the exclusive representative of all production employees including a category called "wood finishers."

2. Although Painters District Council No. 9 (the "Painters") had collective bargaining agreements with the Association prior to July 1, 1967 covering a certain category of employee called "wood finishers" who worked at about 21 shops operated by members of the Association, the Painters have not had a collective bargaining agreement with the Association to cover "wood finishers" since June 30, 1967.

3. In August, 1968, the Painters filed charges against the Association with the National Labor Relations Board ("NLRB"), alleging a refusal to bargain by the Association and providing illegal support to the Carpenters (the



"ULP Case").

4. In October, 1968, the Painters filed a petition with the NLRB (the "Unit Clarification Case"), asking it to clarify the bargaining unit recognized by the Association in its agreement with the Carpenters entered into as of July 1, 1967.

5. In April, 1969, the Painters' parent, the Brotherhood of Painters, Decorators and Paperhangers of America (the "Painters Brotherhood") brought an action against the Carpenters' parent, the United Brotherhood of Carpenters and Joiners of America (the "Carpenters Brotherhood"), pursuant to Article XX of the AFL-CIO Constitution, alleging that the Carpenters had violated Sections 2 and 3 of Article XX.

6. In September, 1969, Impartial Umpire Cole, appointed to resolve the action brought by the Painters Brotherhood against the Carpenters Brotherhood, rendered a decision (the "Cole Determination"), in which he failed to find the Carpenters in violation of Section 2 of Article XX, but did find for the Painters on their Section 3 claim, but only as to 17 shops operated by members of the Association.

7. In November, 1969, the NLRB affirmed by written opinion the Hearing Officer's rulings in the Unit Clarification Case and dismissed the Painters' petition.

8. In June, 1971, a Trial Examiner in the ULP Case issued a decision upholding the Painters claim that the Association was guilty of an unfair labor practice because certain of its activities violated parts of Section 8 of the National Labor



Relations Act.

9. The Trial Examiner's decision in the ULP Case was appealed by the Association and the Carpenters, and in January, 1972, the NLRB overturned the Trial Examiner's ruling and dismissed the Painters' complaint in its entirety. The Painters have never sought judicial review of the NLRB decision in the ULP Case.

10. Since at least the final NLRB decision in the ULP Case, the Association has unequivocally informed the Carpenters that it will not recognize any other union as the bargaining agent for any of its members' employees, including "wood finishers," nor will it make contributions to the fringe benefit funds of any union with which it does not have a contract, including the Painters.

Affidavit of Conrad J. Olsen

(Submitted in support of Defendant's Motion)

(Caption Omitted)

STATE OF NEW YORK )  
                              : ss.:  
COUNTY OF NEW YORK )

CONRAD F. OLSEN, being duly sworn, deposes and says:

1. I am President of District Council of New York, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the "Carpenters") and am personally familiar with the facts and circumstances surrounding the issues in this case. I make this affidavit in support of the Carpenter's Motion to Dismiss and for Summary Judgment.



2. I have been associated with the Carpenters since 1955 in various capacities, including Assistant to the President, Second Vice President and First Vice President. I have been President of the Carpenters since January 1, 1970, and in that capacity I have had overall responsibility for the Carpenters' activities and its relationships with other unions, including Painters District Council No. 9 (the "Painters"). In addition, I have been involved since 1967 with matters relating to any disputes between the Carpenters and the Painters, particularly as regards the employment of wood finishers at the various shops of the members of the Manufacturing Woodworkers Association of Greater New York, Inc. (the "Association").

3. Thus, I am familiar with the facts and circumstances surrounding the representational dispute between the Carpenters and Painters concerning employees of members of the Association which is the underlying basis for the action asserted herein by the plaintiffs.

#### I. BACKGROUND

4. For many, many years, the Carpenters have had a collective bargaining relationship with the Association covering workers employed by members of the Association. It is undisputed that the Carpenters were and continue to be the collective bargaining representative of over 2,900 of the approximately 3,000 employees who work for Association members. The successive contracts between the Association and the Carpenters have covered all of the various types of workers, including



wood finishers. In a minority of the 48 shops operated by Association members, certain employees, because of their previous union affiliations, were represented by the Painters. Over the years, between 14 and 21 of the Association's members employed some wood finishers represented by the Painters, with the number of shops employing Painters' members varying, depending upon business conditions and individual employee preferences.

5. Although individual Association employers who employed Painter-members signed agreements with the Painters so as to assure pension and welfare contributions, the Carpenters have been throughout the long bargaining history among the Painters, the Carpenters and the Association, the de jure bargaining representative of all of the workers employed by the Association. Moreover, the Carpenters have always represented well in excess of 50% of all employees in various aspects of "wood-finishing" and in certain cases, a number of wood finishers employed in shops which had contracts with the Painters were not members of the Painters, but were members of the Carpenters.

6. In general, the Association's agreements with the Painters followed the pattern set by the Association's agreements with the Carpenters. Any variations were very minor and only applied to a very small percentage of the Painter employees.

## II. THE BASIS OF THIS CASE

7. The real crux of the plaintiffs' case is their implicit assertion that the Painters have the right (based upon the decision of Impartial Umpire Cole) to represent certain wood



finishers in a minicrity of the shops operated by the Association, and, as a result of the Painters' failure to obtain that right, they, the plaintiffs, have been injured. As the facts hereinafter presented will clearly demonstrate, the Painters have no such right because they have been unable to establish before the National Labor Relations Board ("NLRB") that they have any legal basis to represent such a group of wood finishers, and, in fact, the NLRB has endorsed the Carpenters as the appropriate representative of all wood finishers employed by members of the Association.

8. In 1967, as a result of a contested election for the office of Secretary-Treasurer and Business Manager of the Painters, there was a change in the administration of the Painters. In the election campaign, the challenger claimed that if elected he would in effect increase the wage scale for Painter members employed as wood finishers by almost \$2 per hour. It was also rumored that the Painters might seek to enforce the union security clause in their agreement with the Association, thereby forcing Carpenters' members to join the Painters.

9. The Carpenters, who had always represented "all production workers" by the very terms of their agreements with the Association, began to fear that the Painters would try to carve out and create a separate employee unit of wood finishers. Since the vast majority of wood finishers were members of the Carpenters, the Carpenters decided to codify their traditional jurisdiction, and, in the context of concluding contract



negotiations in June, 1967, the Carpenters and the Association specifically made reference to wood finishers for the first time. The new collective bargaining agreement was entered into on June 30, 1967.

10. At the same time, the new Painters' administration was attempting to negotiate an agreement with the Association. Failing to reach agreement on monetary demands, and informed of the Carpenters' codification of their traditional status as representatives of the wood finishers, the Painters struck the Association.

11. The Carpenters considered the Painters' wage demands unrealistic and extremely detrimental to the future of the manufactured woodworking industry in New York City. In addition, the Carpenters represented over 3,000 employees working for members of the Association, while the Painters represented at most 70-90 wood finishers employed at only 17 of the 48 Association shops. Based on these considerations, the Carpenters refused to recognize the Painters' picket line. However, the Carpenters did not undermine the Painters' dispute with the Association by replacing "wood finishing" employees who were members of the Painters with employees who were members of the Carpenters. Nor did the Carpenters accept any wood finishers who were members of the Painters into the Carpenters. The Association's members, in order to continue operations, hired new employees to replace the wood finishers represented by the Painters who were on strike.

12. After a six-week strike, the Painters returned to



work without any agreement with the Association. Informally, the Painters did agree with the Association that the Painters would receive the same rate of pay as the Carpenters. The Association claimed at the time that the strike caused Association members to lose over \$4,000,000 worth of contracts, thereby losing profits of about \$1,000,000.

13. In subsequent negotiations between the Painters and the Association, the Association proposed a contract which included no union security clause, but rather merely referenced the fact that the Painters were to represent those members who "are or shall become" members of the Painters. The Association proposal was merely an attempt to codify the long-standing practice among the Carpenters, the Painters and the Association. The Painters, for the first time, asserted that they should be recognized as the exclusive bargaining agent in certain of the Association shops. Counsel for the Association clearly indicated that this recognition would not be forthcoming. These negotiations continued into 1968, but without resolution.

14. At the same time, the Association, through its counsel, made clear to the Carpenters that the Association recognized the Carpenters as the exclusive bargaining agent of all wood finishers employed by the Association members, that the Association felt that the Carpenters could not, under applicable Federal law, deny membership in the Carpenters to



wood finishers who wanted to join, and that the no-raiding agreement of the AFL-CIO Constituion was both "invalid and un-enforceable" under Federal law. Furthermore the Association clearly indicated that it could not grant exclusive jurisdiction to the Painters without violating the Labor-Management Relations Act. (See letters of the Association's Counsel to the Carpenters dated June 18, 1968 and July 26, 1968, copies of which are attached hereto as Exhibits A and B). The Association also brought charges before the NLRB against the Painters in late July, 1968, which I believe were dismissed at some later date. (See page 2 of Exhibit B hereto)

15. Throughout the summer and fall of 1968, the Carpenters continued to grapple with the problem of representing wood finishers and they had at least two meetings with the Painters in an effort to settle the problem amicably. These efforts were to no avail. (See Minutes of Meeting of the Carpenters, and of Meeting of the Carpenters and the Painters, dated June 25, 1968 and December 3, 1968, respectively, copies of which are attached hereto as Exhibits C and D)

16. On August 5, 1968, fourteen months after the Carpenters and the Association had entered into an agreement covering the wood finishers, the Painters filed charges with the Second Regional Office of the NLRB, alleging a refusal to bargain by the Association and illegal support provided to the Carpenters by the Association (this action is hereinafter referred to as the "ULP Case"). On October 31, 1968,



the Painters filed a petition asking the NLRB to clarify the bargaining unit recognized by the Association in its agreement with the Carpenters entered into in June, 1967. The Painters alleged in this action (hereinafter referred to as the "Unit Clarification Case") that the wood finishers employed in 21 of the Association's shops were inappropriately included in the bargaining unit represented by the Carpenters and should be removed from that unit and placed in a unit similar to the one previously represented by the Painters.

17. On March 21, 1969, the Painters again went out on strike, demanding that they be recognized as the exclusive bargaining representative for wood finishers. The Carpenters again refused to take over the work performed by members of the Painters who were on strike. The late President of the Carpenters, Charles Johnson, Jr., confirmed the Carpenters' position in writing to all shop agents. (See copy of May 26, 1969 letter, attached hereto as Exhibit E) The members of the Association affected by the Painters' work stoppage were forced to replace these Painter wood finishers with other non-Carpenters' employees.

18. Prior to any initial determinations in the ULP Case and the Unit Clarification Case, the Painters' parent, the Brotherhood of Painters, Decorators and Paperhangers of America (the "Painters Brotherhood"), brought an action in April, 1969, Case No. 69-31, against the Carpenters' parent, the United Brotherhood and Joiners of America (the "Carpenters Brotherhood"), under the terms of Article XX of the AFL-CIO Constitution



called the "Internal Disputes Plan." The Painters Brotherhood alleged violations of Sections 2 and 3 of Article XX in that the Carpenters apparently either (1) took over or attempted to take over the Painters' representation rights at 21 shops, or (2) attempted, by agreement or in collusion with the Association, to have employees represented by the Carpenters do work customarily performed by employees represented by the Painters.

19. Section 2 of Article XX provides in relevant part that affiliates shall respect the established and collective bargaining relationship of other affiliates, and [n]o affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate." Section 3 of Article XX provides in substance that affiliates must respect the established work relationship of other affiliates, with an "established work relationship" being deemed to exist "as to any work of the kind which members of an organization have customarily performed at a particular plant or work site ..." The Painters Brotherhood's charges were referred to an Impartial Umpire, David L. Cole.

20. On April 23, 1969, in direct response to the Painters' strike commenced on March 21, 1969, the Association brought an action in New York Supreme Court, seeking a temporary injunction requiring the Carpenters to provide Association members with wood finishers, together with permanent injunctive relief and damages in the amount of \$1,000,000. (A copy of the court papers in that action is attached hereto as Exhibit F) Although this action has not been formally prosecuted by the Association, it was and still



remains a major impediment to the efforts undertaken by the Carpenters in seeking to settle the representational dispute.

21. Before Impartial Umpire Cole rendered his decision, Haywood E. Banks, a hearing officer of the NLRB, reviewed the Painters' petition in the Unit Clarification Case (NLRB Case 2-UC-27, Manufacturing Woodworkers Association, 179 NLRB No. 85). After conducting a series of lengthy hearings during the period November 21, 1968-June 18, 1969, Banks made certain findings of fact. Thereafter on July 1, 1969, the Acting Region 2 Director of the NLRB ordered the case transferred to the NLRB in Washington, D.C. for a final decision on the merits of the case.

22. On September 4, 1969, in a lengthy statement (the "Cole Determination," a copy of which is attached hereto as Exhibit G), Impartial Umpire Cole rendered a decision in Case No. 69-31 brought by the Painters Brotherhood. Cole refused to find that the Carpenters had violated Section 2 of Article XX, thus affirming the Carpenters "established collective bargaining relationship" with the Association, which included representation of wood finishers. He did, however, uphold the Painters on their Section 3 claim, apparently finding that the Carpenters violated that section, and sustaining the Painters' complaint "with respect to the woodfinishing work, as defined above, conducted in the woodfinishing and spray rooms or areas" in 17 named shops (Cole Determination, pp. 5-6).

23. Although the Carpenters disagreed with the decision, felt it was largely unsubstantiated, and knew that the Association would in no way be bound by it, they nevertheless sought advice from the Carpenters Brotherhood on how to proceed,



inasmuch as Cole had specified no steps or remedies to be taken by the Carpenters to correct the alleged violation. (See Carpenters' letter to the Carpenters Brotherhood, dated September 5, 1969, a copy of which is attached hereto as Exhibit H)

24. The Association informed the Carpenters Brotherhood that Cole's decision was unfounded and, by implication, would not be respected by the Association. At the same time, the Association informed the Painters that the Association had no intention of abiding by the Cole Determination. (See letters from the Association to the Painters and to the Carpenters Brotherhood, dated September 10, 1969 and September 25, 1969, respectively, copies of which are attached hereto as Exhibit I).

25. On November 7, 1969, the NLRB affirmed the Hearing Officer's rulings in the Unit Clarification Case. (A copy of the NLRB decision in 179 NLRB No. 85 is attached hereto as Exhibit J) Based upon its own findings, the NLRB concluded as follows:

"Upon the foregoing facts, and considering the record as a whole, it is clear that the [Painters'] unit clarification action is inappropriate to resolve the dispute over representation of 'wood finishers' employed in 21 shops of employer-members of the Association. The [Painters are] not currently recognized by any of the employer-members, and insofar as the record reflects has no contractual right to represent any of their employees. On the contrary, insofar as the record reflects and the Board may determine in this proceeding, the [Carpenters are] the duly recognized and contractual representative of the 'wood finishers,' and the instant petition raises a question concerning representa-



tion which cannot be resolved in the proceeding now before us. Accordingly, we shall dismiss the petition." (Footnote omitted; emphasis added)

26. On January 27, 1970, the Regional Director of Region 2 of the NLRB made a determination that further proceedings on the charges filed by the Painters in the ULP Case (Case 2-CA-11621) were unwarranted. (A copy of his letter is attached hereto as Exhibit K.) The Regional Director stated in part:

"In any event, the status of the [Carpenters] as the chosen representative of a majority of the employees covered by the July 1, 1967 Agreement between the Carpenters and the Association] has not been challenged. With respect to the refusal to bargain with [the Painters] on behalf of the hardwood finishers employed in 21 shops of the Association, I have concluded that on the evidence adduced in the investigation, including the record of the proceedings in Case No. 2-UC-27, [the Unit Classification Case], these employees cannot be deemed to constitute a separate appropriate unit. As the aforesaid agreement made on July 1, 1967 covers the hardwood finishers in the 21 shops, as well as the hardwood finishers in the other shops operated by Association members together with other categories of employees, the refusal to bargain with you must be regarded as having been lawful. I therefore am refusing to issue a complaint in this matter."

27. The Association, in response to the Regional Director's dismissal of the Painters' charges in the ULP Case, informed the Carpenters that the Association would not "under any circumstances" recognize or bargain with the Painters' (See the letter of the Association to the Carpenters dated January 29, 1970, a copy of which is attached hereto as Exhibit L)

28. In late February, 1970, the Carpenters finally received their first and, as a practical matter, only guidance from the AFL-CIO as to what steps were necessary to comply with



the Cole Determination. In a letter from President George Meany to the President of the Carpenters Brotherhood, the following was stated:

"This is in reference to the [Cole Determination] concerning what action is necessary on the part of the United Brotherhood of Carpenters and Joiners to implement the determination of Impartial Umpire Cole rendered on September 4, 1969.

Please be advised that your organization must make certain that your members immediately cease performing the wood finishing work in the wood finishing and spray rooms or areas of the following 17 shops in Greater New York City [same shops designated in Cole Determination]." (Letter of February 27, 1970 from George Meany to Carpenters Brotherhood, a copy of which with related correspondence is attached hereto as Exhibit M; emphasis added)

The only reasonable reading of these instructions is that the Carpenters were not permitted to take over the work performed by Painters' members or represent workers hired to replace the Painters' members who had done wood finishing. Inasmuch as the Carpenters had refused and continue to refuse either to grant membership to employees replacing Painter-represented wood finishers or to replace such wood finishers with wood finishers who are members of the Carpenters, the Carpenters have in fact complied with the Cole Determination.

29. During 1970 and early 1971, meetings were held between and among the Carpenters, the Painters and the Association, in an effort to resolve the Painters continuing demand for exclusive representation. During this period, in June, 1970, the Association and the Carpenters entered into a new three-year contract, much the same as the 1967 agreement and again covering all production employees and particularly wood



finishers.

30. Although the ULP Case was initially dismissed, it was eventually referred to a hearing examiner who issued a decision on June 11, 1971 supporting the Painters and holding that the Association was indeed guilty of an unfair labor practice. In substance, the Trial Examiner concluded that a 21-shop unit of "wood finishers" was appropriate, that the Association had a prior binding obligation to the Painters when it granted exclusive recognition to the Carpenters and withdrew such recognition from the Parties in June, 1968, and that such activities violated Sections 8(a)(1), (2) and (5) of the National Labor Relations Act. [29 U.S.C. §§158(a)(1), (2) and (5)].

31. The Trial Examiner's decision in the ULP Case was appealed by the Association and the Carpenters to the NLRB. On January 18, 1972, a three-member panel of the NLRB overturned the Trial Examiner's ruling and ordered that the Painter's complaint be dismissed (A copy of this opinion is attached hereto as Exhibit N). In disagreeing with the Trial Examiner, the NLRB panel made the following analysis:

"The Carpenters has represented all the production workers of the association, including some wood finishers, for a number of years in the shops of the 48 members, in an all-inclusive association unit. As indicated above, the Painters represented its member wood finishers in approximately 21 shops of the association. Actually, the [A]ssociation contracts with the Carpenters and Painters were clearly in conflict with each other, as both contained union-security clauses. The parties managed to get along under this arrangement only because of their mutual understanding that each Union would



represent only its own members. Beginning in 1967, however, the Carpenters, relying on its status as the representative of the overwhelming majority of the employees in the woodworking shops, including wood finishers, insisted that the association recognize the existing situation by specifically including the term "wood finisher" in their 1967, and, subsequently, their 1970, contracts. After signing the 1967 contract with the Carpenters, the association then refused the demand of the Painters to be recognized as the representative of wood finishers except on a "members only" basis which would have reflected the actual status of that Union.

Although the Painters' contracts have, since at least 1962, contained specific provisions calling for exclusive recognition and coverage, the record discloses that these contracts have never been so applied. Rather, based on the apparent understanding of the parties and their actions, it seems clear that Painters has been treated as the bargaining representative only of its own members in a variable group of association shops employing such members. In the past the Board has held that a history of collective bargaining on a "members only" basis does not provide an adequate basis for representation nor the appropriateness of a bargaining unit such as the statute contemplates. The Board has traditionally refused to give weight to such a bargaining history, or to require its continuance, and we will not do so here. Under these circumstances, we cannot find that the [Association] was obligated to continue to recognize the Painters as the exclusive bargaining representative either for all wood finishers, as provided in previous contracts, or for an alleged unit of wood finishers comprising association shops in which members of the Painters are employed. In view of the Carpenters' status as the actual representative of a majority of production employees of all association members, including the wood finishers, we find that the General Counsel has not established that the actions of the association constituted illegal assistance to the Carpenters. Accordingly, we shall dismiss the complaint in its entirety." (Manufacturing Woodworkers Association, 194 NLRB 178, pp. 6-7; emphasis added)

The Painters have never sought judicial review of the NLRB decision in the ULP Case.

32. As a result of this decision, the Carpenters



felt (and continue to feel) completely vindicated in their belief that their actions since 1967 have not been in violation of the AFL-CIO Constitution. (See letter of January 28, 1975) from the late Charles Johnson, Jr. to George Meany, a copy of which is attached hereto as Exhibit O).

33. The Association interpreted the NLRB decision in the ULP Case not only as a full affirmance of their position, but also as a basis for demanding that the Carpenters now accept its position as the exclusive bargaining agent for all of its members' employees. In a letter to me dated February 28, 1972 (a copy of which is attached hereto as Exhibit P), Al Miller, Counsel to the Association, stated in part:

"...we wish to advise you that the Association is not interested in returning to the arrangement which existed prior to June 1967. The Painters Union may suggest this. The Association has a contract with the Carpenters Union which provides that the Carpenters Union is the exclusive bargaining representative of all production employees. The Association will not recognize any other union as the bargaining representative, exclusive or otherwise, for any of its members employees. The Carpenters contract requires that all employees become members of the Carpenters Union thirty days after employment. The Association expects that this provision will be complied with. The Carpenters contract also requires contributions to be made to the various Carpenter funds for all bargaining unit employees. We expect that this provision of the contract will be complied with. The Association will not contribute to the funds of any union with which it does not have a contract requiring such contributions. We also expect that the Carpenters Union will furnish to our members, upon request, in accordance with the provisions of the Carpenters agreement, any needed production employee including wood finishers. Some time ago the Association was forced to start a legal action to compel the Carpenters Union to furnish employees as required by their contract. Prosecution of this action was withheld pending the outcome of the Labor Board case. Unless the Carpenters Union complies with



this provision of the contract, we see no reason why such legal action should not be vigorously prosecuted at this time.

We sincerely hope that the disruption caused by the demands of the Painters Union which have existed over the last five years will end and our members can once again concentrate on doing their business. The Association will vigorously oppose any action to the contrary." (emphasis added)

Since the time of that letter, the Association has refused to recognize the Painters, and all fringe benefit contributions to be paid by the employers for wood finisher employees, including members of the Painters, have been paid to the Carpenters. And, although the position taken by the Association left the Carpenters no option with regard to the receipt of employer contributions, the Carpenters have continued to make every effort, down to the present day, to protect members of the Painters, particularly as regards their pension benefits.

34. The response of the Painters to the NLRB decision in the ULP Case was to seek further redress from the AFL-CIO through the Painters Brotherhood, flying directly in the face of the clear and unequivocal NLRB decisions against their position (See Raftery letter to Meany, dated February 23, 1972, a copy of which is attached hereto as Exhibit Q) In response thereto, President George Meany asked that a meeting of all parties be held under the auspices of two senior AFL-CIO officers. (See correspondence dated March 1, 9, 13, and 22, 1972 among the parties, copies of which are attached hereto as Exhibit R). It is interesting to note that President Meany assigned this complaint by the Painters Brotherhood a new case number, Case No. 72-19, implying that the matters raised in the



earlier complaint, Case No. 69-31 (See ¶18 above) which resulted in the Cole Determination, were at an end.

35. Meetings were held periodically during the rest of 1972, through 1973 and into mid-1974. Most meetings were held at the suggestion of AFL-CIO Vice President Emeritus David Sullivan, with representatives of the Carpenters, the Painters and the Painters Brotherhood. Although the Painters and the Carpenters have basically agreed to a settlement of representational differences, the Association has stood on its contractual rights under applicable Federal labor law provisions and refused to consider any proposal which would involve recognition by it of the Painters.

36. In spite of these problems, the Carpenters have continued throughout to cooperate with the Painters, particular with regard to the pension rights of wood finishers who are members of the Painter, and has even requested that the Carpenters' Pension Fund transfer contributions to the Painters Pension Fund to insure that retiring Painter members received the pensions which they deserve.

### III. SUMMARY

37. The Carpenters have, throughout the lengthy and difficult period of this dispute, sought to recognize and fulfill its legal responsibilities. It has in no way sought to replace Painter-member wood finishers with its own members, nor has it knowingly accepted a Painter-member wood finisher into its membership. In fact, it has complied to the letter with the only direct instructions it has received from the AFL-CIO, as



issued by George Meany to the Carpenters pursuant to the Cole Determination.

38. The Carpenters have also recognized the responsibilities which it owed to its own membership to maintain employment and which it owed to the Association under the terms of its various exclusive collective bargaining agreements with it. The Carpenters, as a matter of Federal law, are bound to represent all employees working for members of the Association, a fact which the Association has repeatedly brought to its attention. Even today, the Association's lawsuit against the Carpenters is still pending (see Paragraphs 19 and 32 above).

Inasmuch as the Carpenters have complied with the Cole Determination and are bound under Federal law, as interpreted and applied by the NLRB, to represent all wood finishers, the Carpenters can have no liability to the plaintiffs in this case.

Accordingly, the Carpenters' Motion to Dismiss and For Summary Judgment should be granted.

/s/ CONRAD F. OLSEN

Conrad F. Olsen

Sworn to before me this

28th day of October, 1975.

/s/ ROBERT G. KUHACH

Notary Public

(Exhibits Omitted)

Plaintiffs' Notice of Cross-Motion  
(Caption Omitted)

S I R S :

PLEASE TAKE NOTICE that upon the summons and complaint herein, and upon the annexed affidavit of MARIO VOZZO, sworn to the 21st day of December 1975, and upon the exhibits annexed to either, the undersigned will move before the Honorable Charles M. Metzner, a United States District Judge, in Room 2201 of the United States Court House, Foley Square, New York, New York, on January 9, 1976 at 9:30 A.M. or as soon thereafter as counsel can be heard for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting partial summary judgment on the issue of liability herein and providing injunctive relief, ordering and directing defendant to comply with the arbitration decision handed down on or about September 4, 1969 by an Impartial Umpire pursuant to the Constitution of the AFL-CIO by causing its members to cease forthwith and to desist from performing woodfinishing work in or for any of the 17 woodwork shops specified in that decision, and for such other, further and different relief as may be appropriate.

Yours, etc.,

BURTON H. HALL

TO: BREED, ABBOTT & MORGAN, ESQS. Attorney for Plaintiffs  
1 Chase Manhattan Plaza 401 Broadway  
New York, N.Y., 10005 New York, N.Y., 10013  
(212) 431-9114



Plaintiffs' Rule 9(g) Statement

(Caption Omitted)

PLAINTIFFS' STATEMENT PURSUANT TO RULE 9(g)  
OF THE GENERAL RULES OF THIS COURT

Pursuant to Rule 9(g) of this Court's General Rules, the plaintiffs herein make the following statement of material facts as to which there is no genuine issue or dispute.

1. Carpenters and Pointers (the parent international labor organizations and all their subordinate bodies, including the defendant Carpenters District Council and Painters District Council No. 9 of New York City) are bound and at all times herein mentioned have been bound by the terms of the AFL-CIO Constitution.

2. Article XX of the AFL-CIO Constitution provides, in Section 3 thereof, that each affiliate shall respect the established work relationship of every other affiliate and it further provides, inter alia,

"No affiliate shall by agreement or collusion with any employer or by exercise of economic pressure seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate."

3. Article XX of the AFL-CIO Constitution further provides for an arbitration procedure by which disputes under that article may be settled by an arbitration hearing before an Impartial Umpire and an arbitration decision made by such Impartial Umpire.

4. In April 1969, Painters (the International Brotherhood of Painters and Allied Trades) filed charges against Carpenters (the United Brotherhood of Carpenters and Joiners) under Article XX of the AFL-CIO Constitution, alleging that Carpenters, by defendant District Council, had violated Section 3 of that Article in connection with woodfinishing work performed at 21 woodwork shops in New York City.

5. On September 4, 1969, after a full arbitration hearing before Impartial Umpire David L. Cole pursuant to the provisions of Article XX of the AFL-CIO Constitution, the Impartial Umpire handed down a decision and arbitration award which upheld the aforesaid charges filed by Painters against Carpenters as to 17 of the 21 shops and found that Carpenters, and defendant District Council, had violated Section 3 of Article XX of the AFL-CIO Constitution in regard to woodfinishing work performed in those shops. A copy of the decision is annexed to the Complaint.

6. The meaning and import of the Impartial Umpire's decision were set forth in a letter from George Meany, President of the AFL-CIO, to Carpenters dated February 27, 1970, a copy of



which is annexed to the affidavit of Conrad Olsen as Exhibit "M" thereto; that letter advises Carpenters, inter alia, as follows:

"... your organization must make certain that your members immediately cease performing the wood finishing work in the wood finishing and spray rooms or areas of the ... 17 shops...."

7. Members of Carpenters and of Defendant District Council have continued, and still continue, to perform wood finishing work in the wood finishing and spray rooms of the 17 shops specified in the arbitration decision described in paragraph 5 above and in the letter described in paragraph 6 above.

8. Carpenters, and defendant District Council, have permitted their members, and still permit their members, to perform wood finishing work in the wood finishing and spray rooms or areas of the 17 shops, and neither has caused or attempted to cause its members to cease performing wood finishing work in the wood finishing and spray rooms or areas of those 17 shops.

9. For many years, and as far back as 1932, Painters, by Painters' District Council No. 9 of New York City, has had a collective bargaining relationship with certain woodwork shops in New York City in regard to the wages, hours and conditions of persons employed therein as woodfinishers, and and has entered into a series of collective bargaining agreements with these shops and/or their representative in regard to the wages, hours

and conditions of persons employed therein as woodfinishers.

10. The series of collective bargaining agreements entered into between Painters and the woodwork shops, as described in paragraph 9, continued and extended until June 30, 1967, at which time a collective bargaining agreement between Painters and the bargaining representative of the 21 woodwork shops referred to in paragraph 4 above, governing the wages, hours and conditions of persons employed at those shops as woodfinishers, expired.

11. On or about July 1, 1967, being unable to agree with the bargaining representative of the 21 woodwork shops concerning the terms and conditions of a new collective bargaining agreement for woodfinishers in the 21 shops, Painters, by Painters District Council No. 9 of New York City, called a strike of woodfinishers in the said shops.

12. On or about July 1, 1967, after Painters had called the strike of woodfinishers described in paragraph 11 above, defendant Carpenters entered into an agreement with the bargaining representative of the 21 woodwork shops described above, which agreement purported to govern the wages, hours and conditions of persons employed as woodfinishers in those 21 shops.

13. Until July 1, 1967 or thereafter, and until the strike described in paragraph 11 above, neither Carpenters nor defendant District Council nor any other subordinate body of



Carpenters had ever had a collective bargaining relationship with any of the 21 woodwork shops described above covering woodfinishers employed in those shops, and neither Carpenters, nor defendant District Council 1, nor any other subordinate body of Carpenters had ever entered into a collective bargaining agreement with any of those shops, or with their representative, covering or purporting to cover wood finishers or persons employed as woodfinishers at any of those shops.

14. During the period that the strike described in paragraph 11 was in process, defendant Carpenters, by its District Council and by the local unions affiliated with and under the direction of defendant District Council, caused its members to work and/or continue to work as woodfinishers at the 21 shops struck by Painters.

15. Some five and one-half weeks after the strike was commenced, it was called off, and Painters, by Painters District Council No. 9, continued to negotiate with the bargaining representative of the 21 struck woodwork shops concerning a new collective bargaining agreement to govern woodwork finishers and/or persons employed as woodfinishers in and by the 21 struck shops; and the collective bargaining relationship between Painters and the 21 struck shops thereby continued.

16. The efforts of Painters and of the bargaining representative of the 21 woodwork shops to negotiate a new collective

bargaining agreement for woodfinishers continued until March 20, 1969, on which date the strike was resumed; during the period of the strike efforts to negotiate a new agreement for woodfinishers continued.

17. While the resumed strike was in process, defendant District Council again caused its members, and members of local unions affiliated with and controlled by it, to perform wood finishing work at and for the 21 shops that were struck by Painters.

18. In or about June 1971, Painters called the strike off and instructed woodfinishers represented by it to apply for unconditional return to work at the 21 shops.

19. Following the end of the resumed strike, many members of Carpenters and of defendant District Council continued to work, and still continue to work, as woodfinishers at and for the 21 wood-work shops that had been struck as aforesaid.



Article XX  
of the AFL-CIO Constitution

ARTICLE XX

SETTLEMENT OF INTERNAL DISPUTES

Section 1. The principles set forth in this Article shall be applicable to all affiliates of this Federation, and to their local unions and other subordinate bodies.

Sec. 2. Each affiliate shall respect the established collective bargaining relationship of every other affiliate. No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate. For purposes of this Article, the term, "established collective bargaining relationship" means any situation in which an affiliate, or any local or other subordinate body thereof, has either (a) been recognized by the employer (including any governmental agency) as the collective bargaining representative for the employees involved for a period of one year or more, or (b) been certified by the National Labor Relations Board or other federal or state agency as the collective bargaining representative for the employees.

Sec. 3. Each affiliate shall respect the established work relationship of every other affiliate. For purposes of this Article, an "established work relationship" shall be deemed to exist as to any work of the kind which the members of an organization have customarily performed at a particular plant or work site, whether their employment is with the plant operator, a contractor, or other employer. No affiliate shall by agreement or collusion with any employer or by the exercise of economic pressure seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate. This section shall not be applicable to work in the railroad industry.

**ARTICLE XX—Settlement of Internal Disputes**

Sec. 4. In the event that any affiliate believes that such special and unusual circumstances exist that it would be violative of its basic jurisdiction or contrary to basic concepts of trade union morality or to the constitutional objectives of the AFL-CIO or injurious to accepted trade union work standards to enforce the principles which would apply in the absence of such circumstances, such organization shall nevertheless observe such principles unless and until its claim is upheld in the manner prescribed in Section 17 of this Article.

Sec. 5. No affiliate shall, in connection with any organizational campaign, circulate or cause to be circulated any charge or report which is designed to bring or has the effect of bringing another affiliate into public disrepute or of otherwise adversely affecting the reputation of such affiliate or the Federation.

Sec. 6. Dispute settlements and determinations under this Article shall not determine the general work or trade jurisdiction of any affiliate but shall be limited to the settlement or determination of the specific dispute on the basis of the facts and considerations involved in that dispute.

Sec. 7. The President shall establish procedural rules for the handling of complaints under this Article so that all affiliates involved in or affected by a dispute will have notice thereof, will have an opportunity for the voluntary settlement of the dispute, and, in the event of a failure to reach a voluntary settlement, will have a full and fair hearing



**ARTICLE XX—Settlement of Internal Disputes**

before an Impartial Umpire. The rules shall be such as to insure a speedy and early disposition of all complaints arising under this Article.

Sec. 8. The President shall establish a panel of mediators composed of persons from within the labor movement. The members shall serve at the pleasure of the President. Any affiliate which claims that another affiliate has violated this Article may, by its principal officer, file a complaint with the President. Upon receipt of such complaint the President shall designate a mediator or mediators, selected by him from the mediation panel, and direct that all affiliates involved or affected meet with such mediator or mediators in an effort to effect a settlement.

Sec. 9. A panel of Impartial Umpires composed of prominent and respected persons shall be established. The members of the panel shall be selected by the President with the approval of the Executive Council. If voluntary settlement of a dispute is not reached within fourteen days after the appointment of a mediator or mediators, a hearing shall be held before an Impartial Umpire selected from such panel. Impartial Umpires shall be assigned on a rotating basis, subject to their availability to conduct hearings. The terms of employment of the members of the panel shall be established by the President, with the approval of the Executive Council.

Sec. 10. The Impartial Umpire shall make a determination, after hearing, based upon the principles set forth in this Article. He shall make such deter-

**ARTICLE XX—Settlement of Internal Disputes**

mination within a time specified by the President, unless an extension of time is agreed to by the parties. The President shall transmit copies of the determination to all affiliates involved. He shall, at the same time, request any affiliate which the Impartial Umpire has found to be in violation of this Article to inform him as to what steps it intends to take to comply with such determination. Any response received, or the fact that no response has been received within a time fixed by the President, shall be communicated to the other parties to the dispute.

Sec. 11. The President may extend any time limit if, in his judgment, such extension will more readily effectuate an early settlement or determination of a dispute. Whenever, in the judgment of the President, pressing reasons require an accelerated settlement or determination, he may shorten or eliminate the mediation process or refer the dispute directly to an Impartial Umpire.

Sec. 12. If no appeal is filed from a determination of the Umpire within five days as provided below the determination shall automatically go into full force and effect. Any affiliate which is adversely affected by a determination of the Umpire, and which contends that the determination is not compatible with this Constitution, or not supported by facts, or is otherwise arbitrary or capricious, may file an appeal with the President within five days after it receives the Umpire's determination. Any such appeal shall be referred by the President to a subcommittee of the Executive Council.



ARTICLE XX—Settlement of Internal Disputes

Sec. 13. The subcommittee of the Executive Council may disallow the appeal, in which event the determination of the Umpire shall be final, and subject to no further appeal and shall go into full force and effect; or the subcommittee may refer the appeal to the Executive Council, in which event the determination of the Umpire shall be automatically stayed pending disposition of the appeal by the Executive Council. The determination of the Umpire shall be sustained unless it is set aside or altered by vote of a majority of all of the members of the Executive Council. The decision of the Executive Council where an appeal is granted shall be final, and shall be effective as of the date therein specified.

Sec. 14. Any affected affiliate may file a complaint with the President that another affiliate has not complied with an effective determination of the Impartial Umpire or of the Executive Council on appeal. Upon receipt of such a complaint the President shall immediately convene a meeting of the subcommittee of the Executive Council referred to above. If non-compliance with the determination is found at such meeting, notice of such non-compliance shall be issued by the President to each affiliated national or international union and department.

Sec. 15. Immediately upon the issuance of such notification, the following shall apply:

- (1) The non-complying affiliate shall not be entitled to file any complaint or appear in a complaining capacity in any proceeding under this

**ARTICLE XX—Settlement of Internal Disputes**

Article until such non-compliance is remedied or excused as provided in Section 16;

(2) The Federation shall, upon request, supply every appropriate assistance and aid to any organization resisting the action determined to be in violation of this Article;

(3) The Federation shall appropriately publicize the fact that the affiliate is not in compliance with the Constitution;

(4) No affiliate shall support or render assistance to the action determined to be in violation of this Article.

In addition, the Executive Council is authorized, in its discretion, to:

(1) Deny to such an affiliate the use of any or all of the services or facilities of the Federation;

(2) Deny to such an affiliate any protection under any of the provisions or policy determinations of the Federation;

(3) Apply any other authority vested in the Executive Council under this Constitution.

Sec. 16. Any affiliate which has been found to be in non-compliance and which has been deprived of its rights under this Article may apply for restoration of such rights. Notice of such application shall be given to all of the affiliates involved in the determination or determinations as to which there is non-compliance. If such affiliates consent, the President shall be authorized to restore the rights of the non-complying affiliate after it states its intention in writing to comply thenceforth with the provisions of this Article. If any affiliate involved in the cases



**ARTICLE XX—Settlement of Internal Disputes**

of non-compliance opposes the application, the rights of the non-complying affiliate shall be restored only under the following conditions:

(a) The non-complying affiliate states its intention, in writing, to comply thenceforth with the provisions of this Article;

(b) The non-complying affiliate has undertaken whatever measures may be necessary and practicable to remedy the situation;

(c) The application for restoration of rights is approved by two-thirds vote of the Executive Council, or by a majority vote of the convention.

Sec. 17. Any affiliate which claims justification under Section 4, for action, which would, in the absence of such justification violate the provisions of this Article, shall process its claim, prior to taking action, under the provisions of this Section. Such claim shall set forth the basis upon which the claim is made and the action which the affiliate proposes to take. The claim shall thereafter be processed as provided in this Article except that the determination as to whether the facts justify the proposed action shall not be made by the Impartial Umpire. The Impartial Umpire shall determine whether the proposed action would violate the provisions of this Article in the absence of justification, shall find the facts with respect to the claim of the justification, and submit a report to the Executive Council. The Executive Council shall determine on the report of the Impartial Umpire whether the proposed action would violate the provisions of this Article in the

**ARTICLE XX—Settlement of Internal Disputes**

absence of justification; and, if it concludes by majority vote that the proposed action would so violate it shall find such justification only by a vote of two-thirds of the membership of the Council.

Sec. 18. The President shall be authorized to delegate to such person or persons as he may designate any of his powers or functions under this Article except the authority granted by Sections 12, 14, and 16.

Sec. 19. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between all of the affiliates involved in or affected by the dispute, the provisions of such agreement shall be complied with prior to the invocation of the procedures provided in this Article. If such agreement provides for final and binding arbitration, and an affiliate party to such agreement claims that another such affiliate has not complied with a decision under that agreement, it may file a complaint under the provisions of Section 14 of this Article and the procedures provided in this Article in the case of non-compliance shall be applicable. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between affiliates but involves or affects an affiliate not a party to such an agreement, the affiliate not a party to such agreement may invoke the procedures provided in this Article for the settlement and determination of such dispute.

Sec. 20. The provisions of this Article with re-



**ARTICLE XX—Settlement of Internal Disputes**

spect to the settlement and determination of disputes of the nature described in this Article shall constitute the sole and exclusive method for settlement and determination of such dispute and the provisions of this Article with respect to the enforcement of such settlements and determinations shall constitute the sole and exclusive method for such enforcement. No affiliate shall resort to court or other legal proceedings to settle or determine any disputes of the nature described in this Article or to enforce any settlement or determination reached hereunder.

Sec. 21. The provisions of this Article shall take effect on January 1, 1962. Upon such effective date, the provisions of Article III, Section 4, of this Constitution, except the first sentence thereof, shall be of no further force and effect. However any dispute which has become subject to a formal complaint under such provision prior to January 1, 1962, shall be disposed of under the procedures and principles theretofore applicable and not under the procedures or principles set forth in this Article, except that any recommendation of the Impartial Umpire issued subsequent to January 1, 1962, shall be subject to the provisions of Sections 14 through 16 of this Article.

Sec. 22. Notwithstanding any other provision of this Constitution this Article shall be subject to amendment by the convention by a majority vote of those present and voting either by a show of hands, or, if a roll call is properly demanded as provided in this Constitution, by such roll call.

Opinion and Judgment of the  
Court Below

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

FRANK SANTOS, CARL GURRIERI and :  
MARIO VOZZO, each of them :  
individually, etc., :

Plaintiffs, :

-against- : 75 Civ. 4355  
(CMM)

DISTRICT COUNCIL OF NEW YORK CITY :  
AND VICINITY OF UNITED BROTHERHOOD :  
OF CARPENTERS AND JOINERS OF AMERICA, :  
AFL-CIO, :

Defendant. :

- - - - - x

METZNER, D. J.:

Defendant District Council of New York and  
Vicinity of the United Brotherhood of Carpenters and  
Joiners of America, AFL-CIO (Carpenters District Council)  
moves to dismiss the complaint for failure to state a claim  
and for summary judgment, pursuant to Rules 12(b) and 56,  
Fed. R. Civ. P.

Plaintiffs in this purported class action are  
individual members of one or more of the twenty-seven  
local unions comprising District Council No. 9 of New  
York City (Painters District Council), all of which are



members of the International Brotherhood of Painters and Allied Trades, AFL-CIO (Painters). This action is brought to enforce an arbitration award made by an Impartial Umpire under Article XX of the AFL-CIO constitution which governs the handling of internal disputes. Jurisdiction is alleged to exist by virtue of Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185(a).

The complaint alleges that for many years prior to 1967, Painters District Council had established collective bargaining relationships and work relationships with twenty-one woodwork finishing shops in New York City. In July 1967, a collective bargaining agreement in force between Painters District Council and the employers' association representing the woodworking shops expired and a strike followed. It is claimed by plaintiffs that Carpenters District Council sent its members through the picket lines and performed Painters' work. Some time thereafter the strike terminated with an understanding that a new collective bargaining arrangement would be worked out. However, the strike resumed in March 1969, and on April 10, 1969, Painters filed a

complaint under Sections 2 and 3 of Article XX of the AFL-CIO constitution. Section 2 requires that no affiliate union interfere with an established collective bargaining relationship of another affiliate, or attempt to represent employees as to whom a collective bargaining relationship exists with any other affiliate. Section 3 states essentially the same mandate with regard to interference with an established work relationship.

Under the Article XX procedure, a complaint is referred to an Impartial Umpire for hearing. On September 4, 1969, the Impartial Umpire handed down his decision in which he found that Carpenters District Council had violated Section 3 of Article XX as to seventeen woodfinishing shops. Plaintiffs claim that Carpenters District Council has never followed the determination of the Impartial Umpire.

Sections 14 and 15 of Article XX set forth a comprehensive procedure whereby compliance with the arbitral award may be compelled and punishment for failing to do so may be meted out. Major losses of status and privilege are involved in a finding of non-compliance. Pursuant to the designated procedures, a



protest of noncompliance was sent to AFL-CIO President George Meany on November 14, 1973. There the matter rests. Under Article XX, the president should have sent the matter to a subcommittee of the Executive Council which would determine the issue of noncompliance. Plaintiffs seek injunctive and declaratory relief, as well as damages, involving the enforcement of the arbitrator's award.

Defendant puts forth many arguments on this motion relating to jurisdiction, standing of the plaintiffs to sue for a right of the union, conflict with two NLRB decisions on related matters, primary or exclusive jurisdiction of the NLRB, status of a union constitution as a contract under Section 301, and the like. However, even assuming arguendo that plaintiffs have standing, that the constitution is a contract for the purposes of Section 301, that the conflict with NLRB decisions is immaterial, and that this court has proper jurisdiction, plaintiffs still cannot prevail.

Section 20 of Article XX states:

"Sec. 20. The provisions of this Article with respect to the settlement and determination of disputes of the nature described in this

Article shall constitute the sole and exclusive method for settlement and determination of such dispute and the provisions of this Article with respect to the enforcement of such settlements and determinations shall constitute the sole and exclusive method for such enforcement. No affiliate shall resort to court or other legal proceedings to settle or determine any disputes of the nature described in this Article or to enforce any settlement or determination reached hereunder." (Emphasis added.)

Plaintiffs argue that this clause in the AFL-CIO constitution is void as against public policy, citing Guaranty Trust & Safe Deposit Co. v. Green Cove Springs & M.R. Co., 139 U.S. 137 (1891). They also rely on Scherk v. Alberto-Culver Company, 417 U.S. 506 (1974). These cases are not on point. The Guaranty Trust case involved a term in a deed of trust which limited the mode of sale of property, and which covenant was not intended for the benefit of any person other than the mortgagor. Scherk merely stated that an agreement to arbitrate may be valid as against the judicial remedy under the securities laws, distinguishing Wilko v. Swan, 346 U.S. 427 (1953). Here, there is no question of a waiver of a statutory right of action.



There is some authority on the question of limitations on the reviewability of the award itself. Some courts tend to whittle away at provisions that completely bar review of an award, see, e.g., Brotherhood of Railroad Trainmen v. Central of Georgia Railway Co., 415 F.2d 403, 412-14 and 413 n.20 (5th Cir. 1969), cert. denied, 396 U.S. 1008 (1970). However, it has been held that "a union and an employer could so define an employee-member's contractual rights as to make the contractual remedies for their violation exclusive, even to the point of making a § 301(a) suit unavailable." Boone v. Armstrong Cork Company, 384 F.2d 285, 289 (5th Cir. 1967). Such a term must clearly show an intention to eliminate judicial review. Aerojet-General Corp. v. American Arbitration Association, 478 F.2d 248, 251 (9th Cir. 1973). It has likewise been held that, under a collective bargaining agreement with a finality provision, and absent a showing of lack of jurisdiction or improper conduct on the part of an arbitrator, an employee has no right to review, and must take the entire contract, including the arbitration provisions. Miller v. Spector Freight Systems, Inc., 366 F.2d 92 (1st Cir. 1966) (per curiam).

There is clearly an element of judicial discretion to be applied where a provision absolutely precludes review, and the same should be applied to a contract term which precludes judicial enforcement. However, this is just the sort of situation where preclusion of enforcement is permissible. Any right or remedy available to a union (or employee) arises directly out of the AFL-CIO constitution itself, a mutually protective agreement among affiliate unions. There are no anti-raiding rights or guarantees that exist outside the contract. The affiliates have ceded ultimate authority in this area to the president and the Executive Council of the AFL-CIO. Even assuming standing, but cf. Abrams v. Carrier Corp., 434 F.2d 1234, 1249-50 (2d Cir. 1970), cert. denied sub nom. United Steelworkers v. Abrams, 401 U.S. 1009 (1971), an employee who seeks to invoke the protections of the AFL-CIO constitution is bound by the limitations it imposes.

Since Article XX, Section 20 bars judicial enforcement of the Impartial Umpire's award, the plaintiffs are limited to the relief available to them

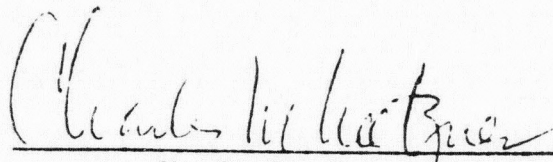


under the enforcement provisions of Article XX.

Summary judgment is granted for defendant,  
there being no substantial question of fact.

So ordered.

Dated: New York, N. Y.  
March 11, 1976

  
U. S. D. J.

COPY RECEIVED BY

MAY 28 1976

BREED, ABBOTT & MORGAN

ATTY'S FOR:

*Appellee*